

Entered on Docket

January 16, 2012
GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Signed: January 12, 2012



FILED

JAN 20 2012

RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND 3/E

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

11 In re No. 10-41422 EDJ
12 PETER CARSON CLARK, Chapter 7
13 Debtor. /
14 TEVIS T. THOMPSON. JR., Adv. No. 11-04190 AJ
15 Trustee
16 Plaintiff,
17 vs.
18 DAVIS FINE ARTS, ET AL.,
19 Defendants. /

BANKRUPTCY JUDGE'S RECOMMENDATION TO DISTRICT COURT

21 Pursuant to the Order Referring Motion for Withdrawal of
22 Reference to Bankruptcy Judge for Recommendation, filed January 5,
23 2012 in District Court Case no. 11-06256-CW, I recommend that the
24 district court deny the pending motion by the defendants in the
25 above-captioned adversary proceeding for withdrawal of the
26 reference, whereupon I would abstain pursuant to 28 U.S.C. § 1334(c).

Memorandum

1 (discretionary abstention) from hearing the third and fourth claims
2 for relief of the complaint at issue herein, and possibly the second
3 claim for relief as well.

4 This approach should not prejudice any party, and will avoid
5 the need for any court to opine on the Constitutional issue raised
6 by the defendants in their motion, which remains an open question
7 upon which definitive appellate guidance is lacking, and which need
8 not be addressed for the reasons stated below.

9 A. Procedural Background

10 The above debtor, Peter Clark, filed a chapter 13 petition on
11 February 10, 2010. Subsequently, the bankruptcy court converted the
12 case to chapter 7. Plaintiff Tevis T. Thompson, Jr. ("Thompson") is
13 the trustee in bankruptcy.

14 The above captioned adversary proceeding contains four claims
15 for relief: (a) First claim: Thompson's objection to the group proof
16 of claim filed jointly by the defendants, (b) Second claim:
17 Thompson's request for a money judgment against defendant
18 La Posada pursuant to Cal. Corp. Code § 16701, which Thompson
19 contends obligates La Posada to purchase the estate's interest in La
20 Posada; (c) Third claim: for dissolution of two partnerships in
21 which the estate holds a partnership interest; and (d) Fourth claim:
22 for dissolution of another partnership in which the estate holds a
23 partnership interest.

24 Defendants have filed a motion for the district court to
25 withdraw the reference of this adversary proceeding, or
26 alternatively, for discretionary abstention pursuant to 28 U.S.C.

1 § 1334(c). Thompson opposes the motion.

2 On January 5, 2012, the district court requested this court to
3 provide its recommendation as to defendants' motion.

4 B. Discussion

5 As to Thompson's first claim for relief (claim objection), it
6 does not appear from defendant's moving papers that they have raised
7 any issue as to a bankruptcy court's Constitutional and statutory
8 authority to allow and disallow claims against the estate. Indeed,
9 the Supreme Court has referred to the allowance and disallowance of
10 claims as an "expressly granted power" of the bankruptcy court¹.
11 Katchen v. Landy, 382 U.S. 323, 329 (1966). It follows that, at
12 least on the record to date, there is no reason for the district
13 court to withdraw the reference of Thompson's first claim for
14 relief.

15 The defendants have not specifically objected to the bankruptcy
16 court hearing the second claim for relief. Even so, to the extent
17 Thompson seeks a money judgment on substantive grounds governed by
18 California state law, the defendants may have a Seventh Amendment
19 right to a trial by jury. If so, abstention by the bankruptcy court
20 would be appropriate as to this claim, because bankruptcy judges may
21 not conduct jury trials absent consent of the parties. 28 U.S.C.
22 § 157(e). Moreover, this may not even be a core claim, in which
23 case the bankruptcy court could not enter any binding findings

24
25 ¹Note that Katchen addressed the power of a bankruptcy
26 referee acting under the Bankruptcy Acts of 1898 and 1938,
analogous to a contemporary bankruptcy court.

1 absent consent of all the parties. 28 U.S.C. § 157(c)(2).

2 For the foregoing reasons, abstention may be appropriate as to
3 the second claim for relief. But even if it is, it does not follow
4 that the reference needs to be withdrawn; a bankruptcy court may
5 abstain on its own authority.

6 Defendants' motion focuses on Thompson's third and fourth
7 claims for relief, by which Thompson seeks to dissolve various
8 partnerships in which the estate holds an interest. These are
9 matters governed by California law. Defendants contend that the
10 bankruptcy court may not Constitutionally hear the claims under the
11 Supreme Court's recent ruling in Stern v. Marshall, a proposition
12 that Thompson disputes. See Stern v. Marshall, 564 U.S. __, 131
13 S.Ct. 2594 (2011) (holding that the bankruptcy court lacked
14 Constitutional authority to enter a final judgment on debtor's state
15 law counter-claim).

16 It is not necessary for the court to reach the Stern issue.
17 Under existing and well established Ninth Circuit law, bankruptcy
18 courts are to construe matters as non-core when the core or non-core
19 nature of a proceeding is a close call and raises a constitutional
20 issue. See In re Castlerock Properties, 781 F.2d 159, 162 (9th Cir.
21 1986) ("[A] court should avoid characterizing a proceeding as 'core'
22 if to do so would raise constitutional problems."). That is the
23 case here.

24 In my view, under Castlerock, a proceeding to dissolve a
25 partnership in which the estate has an interest is not necessarily a
26 core proceeding under 28 U.S.C. § 157(b) (2). "The apparent broad

1 reading that can be given to § 157(b)(2) should be tempered...."
2 Castlerock at 162. If Thompson's third and fourth claims for relief
3 are not core proceedings, then the bankruptcy court may not enter
4 binding findings absent consent of all the parties, lacking here.
5 28 U.S.C. § 157(c)(2).

6 Even if the claims are core, this is still an appropriate case
7 for discretionary abstention under the factors discussed by the
8 Ninth Circuit in In re Tucson Estates, Inc., 912 F.2d 1162, 1167
9 (9th Cir. 1990)². The dissolution of the partnerships is governed
10 by California law. Dissolving them in a California court will not
11

12 ²In Tucson Estates, the Ninth Circuit adopted a list of
13 factors that a bankruptcy court should consider when deciding
14 whether to abstain, as propounded by the Texas bankruptcy court
15 in In re Republic Reader's Serv., Inc., 81 B.R. 422 (Bankr. S.D.
16 Tex. 1987). Those factors are: (1) the effect or lack thereof on
17 the efficient administration of the estate if a Court recommends
18 abstention, (2) the extent to which state law issues predominate
19 over bankruptcy issues, (3) the difficulty or unsettled nature of
20 the applicable law, (4) the presence of a related proceeding
21 commenced in state court or other non-bankruptcy court, (5) the
22 jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6)
23 the degree of relatedness or remoteness of the proceeding to the
24 main bankruptcy case, (7) the substance rather than form of an
25 asserted "core" proceeding, (8) the feasibility of severing state
26 law claims from core bankruptcy matters to allow judgments to be
entered in state court with enforcement left to the bankruptcy
court, (9) the burden on the bankruptcy court's docket, (10) the
likelihood that the commencement of the proceeding in bankruptcy
court involves forum shopping by one of the parties, (11) the
existence of a right to a jury trial, and (12) the presence in
the proceeding of non-debtor parties. In re Republic Reader at
429.

1 interfere with the administration of the debtor's estate. The
2 rights of nondebtor parties may be impacted. There is no basis for
3 bankruptcy court jurisdiction other than 28 U.S.C. § 1334.

4 | C. Conclusion

5 For the foregoing reasons, I recommend that the district court
6 not withdraw the reference.

*** END OF RECOMMENDATION ***

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NORTHERN DISTRICT OF CALIFORNIA
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